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April 5, 2002

VIA HAND DELIVERY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: ***Notice of Ex Parte Presentation***
ET Docket No. 98-206; Skybridge Petition for Rulemaking (RM-9147); Northpoint Petition for Rulemaking (RM-9245); Applications of Broadwave USA et al., PDC Broadband Corporation, and Satellite Receivers, Ltd. to provide a fixed service in the 12.2-12.7 GHz Band; Requests of Broadwave USA, et al. (DA 99-494), PDC Broadband Corporation (DA 00-1841), and Satellite Receivers, Ltd. (DA 00-2134) for Waiver of Part 101 Rules;
Compass Systems, Inc. DBS application

Dear Mr. Caton:

On April 2, 2002, Antoinette Cook Bush and Robert Combs of Compass Systems, Inc. ("Compass") and Tom Davidson of Akin, Gump, Strauss, Hauer & Feld, counsel for Compass, met with Donald Abelson, Breck J. Blalock, Brian Carter, Alexandra Field, Anna M. Gomez, Trey Hanbury, and Thomas S. Tycz of the International Bureau of the Federal Communications Commission ("Commission"). The Compass representatives presented the information contained in the attached presentation. In addition, the Compass representatives urged the Commission to grant the terrestrial applications filed by Northpoint's Broadwave affiliates.

Pursuant to sections 1.1206(b)(1) and 1.1206(b)(2) of the Commission's rules, we are filing twelve copies of this notice of ex parte presentation with the Office of the Secretary. Please associate two copies of this notice with each of the following proceedings: RM-9147, RM-9245, DA 99-494, DA 00-1841, DA 00-2134 and the proceeding to review the Compass DBS application. We have electronically submitted a copy of this notice in ET Docket No. 98-206.

Please contact the undersigned with any questions regarding this matter.

Sincerely,

Tom Davidson, Esq.
Counsel for Compass Systems, Inc.

Attachment

Northpoint Technology
An Integrated Satellite-Terrestrial System

- Northpoint's next generation technology integrates the best of satellite and terrestrial systems to create the ultimate in spectrum efficiency
- Local programming and broadband via a terrestrial network
  - Local channels and other local multi-channel content
  - High speed Internet access – 2 Mbps down; 512 kbps upstream
- National programming via satellite
  - Will provide 300+ channels of national programming
- Basic Core Offering
  - 96 video channels (including all local stations) and high speed Internet access for $39/month –available in all 210 markets.
- Next Generation Set-Top Boxes
  - Modular set top boxes will allow outside innovators to develop an array of new consumer entertainment and information services.

Improved Competitive Offering Through an Integrated Terrestrial Platform ("ITP") & Satellite System

- Significantly improved service to consumers through spectrum efficiencies of combined platform.
  - National video content via satellite
  - Local television and internet via terrestrial
  - Dynamically integrated in consumer set-top box
- Result: greatly increased channel capacity and download speeds; higher overall spectrum efficiency

	Previous	New
Platform	Terrestrial only	Terrestrial & satellite
Video channels	96	300
Internet downstream	1 mbps	2 mbps

Finally a Home for the United States' Orphan Western DBS Slots

- No one has yet succeeded in utilizing the two slots sought for Compass Systems.
- These slots have never been used to provide DBS service.
  - Slot at 166
    - Both applicants that held rights failed to deploy and surrendered their licenses.
  - Slot at 157
    - Hughes failed to deploy and surrendered license.
- The Compass Systems' plan remedies the deficiencies of the far Western locations of the two orbital positions by:
  - Supplementing with Northpoint terrestrial services
  - Providing international service to the Pacific region, Canada and Mexico

Compass Systems' Plan: A Highly Efficient Use of an Unused Resource

- Bringing 157 and 166 into service benefits the United States and U.S. consumers.
  - Currently 4 of the 9 BSS slots are not used
- Compass Systems' proposal offers unprecedented spectrum efficiency:
  - Transmissions can be "rightsized" within the satellites' footprints
    - Local channels and internet delivered by terrestrial links
    - National programming delivered by satellite links
  - Each platform will be used to its highest and best use; Neither will be required to perform a task for which it is poorly suited.
  - Consumers benefit from competition and improved service.
- Service to Hawaii and Alaska will be provided from slot at 166

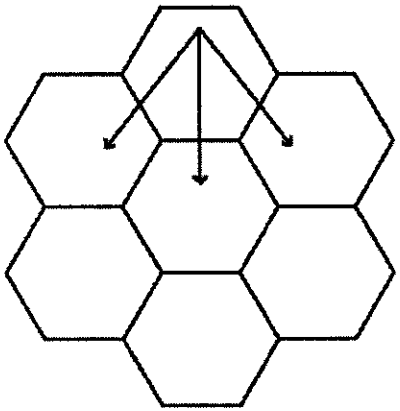
An Integrated Terrestrial-Satellite Network is More Spectrum Efficient than a Terrestrial Only System

- In a terrestrial-only system, capacity must be allocated to uniform "national" video broadcasts that are better broadcast by satellite
- Freeing this resource provides a radical improvement in overall system capacity through improved spectrum efficiency

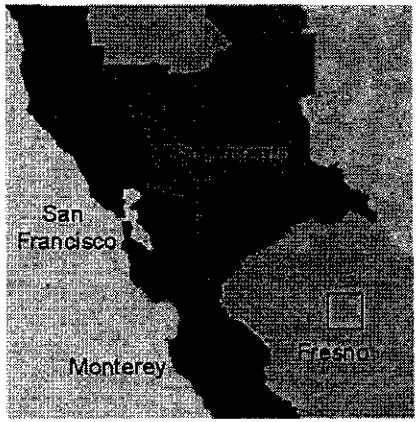
	Reuse potential	Reuse Factor
Single market video	Each television market	210 X
Internet downstream	Each tower	14,000 X
Combined improvement	(half and half allocation)	7105 X

- Every MHz of "national" video that can be placed on a satellite can be reused over 7000 times on the ground.
- Improved spectrum efficiency enables greater diversity of content and internet download speeds

How a Terrestrial Platform Reuses Spectrum



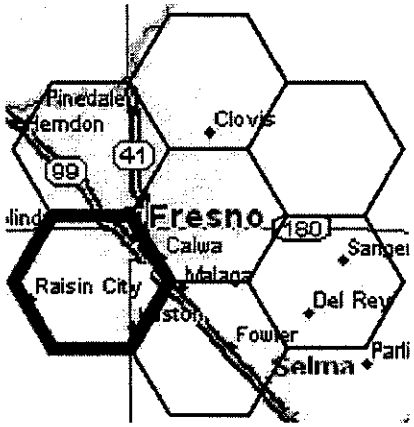
A Northpoint terrestrial network operates as a system of cells.



Cells can function as "repeaters," creating precisely shaped service areas based on television market boundaries.

This allows transmission of local channels or other "single market" content.

Frequencies are reused in each market area.



Cells can also provide unique content only to users within the footprint of a single cell.

Internet downloads and other specialized data can be provided this way.

Frequencies are reused in every cell.

Compass Terrestrial Platform Should be Authorized as a "Non-conforming" Use of DBS Spectrum

- DBS licensees are permitted to "make unrestricted use of [their assigned DBS] spectrum" assignments to provide non-conforming services prior to launching and commencing operation of their DBS systems.
  - The FCC has sought comment on whether to expand the non-conforming use policy for DBS licensees in the western portion of the orbital arc (the location of the licenses requested by Compass).
  - The Commission has explicitly recognized that DBS operators must be allowed to engage in non-conforming uses in order to meet the high up-front costs of launching a DBS system.

Grant of Compass Application is Consistent with Statute, Policy and Precedent for Flexible Use

- Grant of CSI's application promotes spectrum efficiency (highest and best use of spectrum) and other public interest goals.
- Flexible use by Compass:
  - Satisfies the specific flexible use criteria of the Communications Act
  - Consistent with the Commission's stated flexible use policies
    - Increased spectrum efficiencies by encouraging the introduction of new, more efficient technologies
  - Consistent with current Commission proposals and prior actions

Grant of Compass Application is Consistent with Current FCC Proposals and Actions

- SDARS licensees - the satellite radio equivalent of DBS
  - Networks of terrestrial repeaters are authorized using frequencies allocated to satellite-based audio programming
  - Terrestrial networks currently operating pursuant to Special Temporary Authority
- Ancillary terrestrial use of L-band, 2 GHz, and Big LEO
  - Allows terrestrial use to facilitate reception where MSS satellite services are attenuated including
    - Urban areas
    - Areas outside of GEO stationary footprint

Grant of Compass Application is Consistent with Prior FCC Action

- The Commission has allowed flexible use even in cases where the new uses constituted a change in the transmission characteristics of the spectrum allocations:
  - **ITFS and MMDS licensees** to offer mobile services using their fixed service spectrum assignments
  - **Television broadcasters** to use their digital spectrum assignments to provide other wireless services in addition to traditional broadcast services
  - **CMRS licensees** to stimulate competition and encourage innovation
  - **WCS licensees** authorized to provide any service for which their frequency bands are allocated to encourage deployment of new services and products

The Commission Should Not Subject the Compass Application to Competitive Bidding

- Compass is an international satellite applicant.
  - Service will be provided to United States, Mexico, Canada, and portions of the ITU Region 3, including Australia, New Zealand, Papua New Guinea, and other population centers.
- The ORBIT Act expressly states:
  - "notwithstanding any other provision of law, the Commission shall not have the authority to assign by competitive bidding orbital locations or spectrum used for the provision of international or global satellite communications services"
- Thus, the Compass application is not subject to competitive bidding procedures.

Recent Supreme Court and D.C. Circuit Decisions Support the Conclusion that the ORBIT Act Prohibits Auctions of Terrestrial Use

- The DC Circuit in the NPR case stated that when a statute makes a distinction between the "nature of the station" and the "part of the spectrum", the FCC must honor that distinction.
- ORBIT clearly identified a "part of the spectrum" not a "station".
- The *spectrum* used by the Compass system is clearly *spectrum* covered by the ORBIT Act because it will be used "for" the provision of international satellite services.
- The Supreme Court ruling in the Pole Attachment case shows that ORBIT's prohibition on auctions extends to Compass' terrestrial operations.
- Text from Pole Attachment: "Because 'by' limits pole attachments by who is doing the attaching, not by what is attached, an attachment by a 'cable television system' is an attachment 'by' that system whether or not it does other things as well".
- Thus, once "spectrum" is used "for" the provision of international of global satellite systems, it may not ever be auctioned, regardless of "whether or not it does other things as well".